



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2019-0857]

RIN 1625-AA00

Safety Zone; Naval Training Operations, U.S. Naval Magazine Indian Island, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 500-yard radius of Walan Point, Indian Island, WA. This safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards due to naval training operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Puget Sound.

DATES: This rule is effective from 8 a.m. on October 30, 2019, to 4 p.m. on October 31, 2019, and will be subject to enforcement each of these days from 8 a.m. to 4 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0857 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Ellie Wu, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone (206) 217-6051, email SectorPugetSoundWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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|--------|---------------------------------|
| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of proposed rulemaking |
| § | Section |
| U.S.C. | United States Code |

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because issuing an NPRM is impracticable. The Coast Guard received notification of these naval training operations from the U.S. Navy on October 7, 2019, and we must take action by October 30, 2019, to protect the public from potential hazards implicated by these training operations. Delaying issuance of this temporary final rule to publish an NPRM and consider comments in response to the NPRM is impracticable, because the safety zone must be in place for the operation, which begins on October 30, 2019.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because of the danger associated with these training operations, which may include but is not limited to high-

speed maneuvers, simulated attacks, and the firing of blank ammunition. This rule must be effective starting October 30, 2019, to protect vessels, personnel, and the marine environment from potential hazards associated with these training operations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (formerly 33 U.S.C. 1231). The Captain of the Port Puget Sound (COTP) has determined that potential hazards exist with this naval training operation. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone from potential hazards posed by the naval training operation.

IV. Discussion of the Rule

This rule establishes a safety zone regulation from 10 a.m. on October 30, 2019, to 4 p.m. on October 31, 2019. This regulation will only be subject to enforcement for the following 8-hour period each of these 2 days: 8 a.m. to 4 p.m.

The safety zone will cover navigable waters within a 500-yard radius of Walan Point, Indian Island.

The duration of this regulation is intended to protect personnel, vessels, and the marine environment in these navigable waters while naval training operations are taking place. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the waterway on the western side of U.S. Naval Magazine Indian Island. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule will allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human

environment. This rule involves a safety zone lasting only 16 hours in total, which will prohibit entry within designated zone during naval training operations. It is categorically excluded from further review under paragraph L60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T13-0857 to read as follows:

§ 165.T13-0857 Safety Zone; Naval Training Operations, U.S. Naval Magazine

Indian Island, Washington.

(a) *Location.* The following area is a safety zone: All navigable waters within a 500 yards radius of Walan Point, Indian Island, WA.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Puget Sound in the enforcement of the safety zone.

(c) *Regulations.* In accordance with the general regulations in Part 165, Subpart C, no persons or vessels may enter or remain in the safety zone created in this unless authorized by the Captain of the Port or their designated representative. For permission to enter the safety zone, contact the on-scene designated representative or Joint Harbor Operations Center via VHF CH16 or at 206-217-6002. Those in the safety zone must comply with all lawful orders or directions given to them by the Captain of the Port or their designated representative.

(d) *Enforcement periods.* This section will be enforced from 8 a.m. to 4 p.m. daily, on October 30, 2019, and October 31, 2019.

Dated: October 21, 2019.

L. A. STURGIS,

Captain, U.S. Coast Guard,

Captain of the Port Puget Sound.

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